

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 14, 2006 Session

PARKER RYAN WILKES, A MINOR, ET AL. v. DAVID PARKER WILKES

**Appeal from the Circuit Court for Robertson County
No. 10536 Ross H. Hicks, Judge**

No. M2005-02658-COA-R3-CV - Filed on September 27, 2006

In this negligence case, the plaintiff appeals from a jury verdict in favor of the defendant. The plaintiff argues that the trial court should have granted a judgment notwithstanding the verdict or a new trial because the defendant's testimony established the necessary elements of a negligence cause of action. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Charles P. Yezbak, III, Nashville, Tennessee, for the appellant, Parker Ryan Wilkes, a minor, by next friend and natural guardian Melody Lynn Wilkes.

William R. Goodman, III, Springfield, Tennessee, for the appellee, David Parker Wilkes.

MEMORANDUM OPINION¹

Four year old Parker Wilkes suffered permanent blindness in one eye when he fell and hit a hay spear attached to a tractor that his grandfather, David Wilkes, was operating to put it away in his shed. Parker, through his mother, filed suit for damages resulting from the tragic accident. After hearing all the evidence, the jury returned a verdict in favor of the defendant grandfather.

¹Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The plaintiff filed a motion for judgment notwithstanding the verdict or, in the alternative, a motion for new trial. The trial court denied the motions.

A judgment notwithstanding the verdict is proper in a negligence case only if the court determines that reasonable minds could not differ as to conclusions to be drawn from the evidence. *Eaton v. McLain*, 891 S.W.2d 587, 590 (Tenn. 1994). The motion for new trial asserted as grounds that the verdict was contrary to the weight of the evidence. The standard for review in that situation is whether there is any material evidence to support the verdict. Tenn. R. App. P. 13(d).

To establish a cause of action for negligence, a plaintiff must prove all five elements: duty of care owed by the defendant to the plaintiff; breach of that duty; an injury or loss; cause in fact; and proximate cause. *Biscan v. Brown*, 160 S.W.3d 462, 478 (Tenn. 2004). Consequently, in order to reverse the judgment below, this court would have to find there was no material evidence upon which the jury could have relied to find the plaintiff failed to prove all the elements. Or, we would have to conclude that reasonable minds could not differ as to the conclusion that Mr. Wilkes was negligent and his negligence caused the injury to Parker.

We have reviewed the record and are unable to reach either of those conclusions. Although the plaintiff argues that Mr. Wilkes' own testimony established each of the elements, we disagree.

The judgment of the trial court is affirmed. The costs on appeal are taxed to the appellant, Parker Ryan Wilkes, a minor, by next friend and natural guardian Melody Lynn Wilkes.

PATRICIA J. COTTRELL, JUDGE